

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ARTURO TORRES OCHOA,

Plaintiff,

v.

RENEE BAKER, et al.,

Defendant.

Case No. 3:13-cv-00245-MMD-VPC

ORDER

This prisoner civil rights action comes before the Court following plaintiff's failure to pay the \$350.00 filing fee in response to the Court's order of June 19, 2013.

Pursuant to 28 U.S.C. § 1915(g), "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," he may not proceed *in forma pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under "imminent danger of serious physical injury." See *Andrews v. King*, 398 F.3d 1113, 1123 (9th Cir. 2005); see also *Rodriguez v. Cook*, 169 F.3d 1176, 1178-82 (9th Cir. 1999); *Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997).

In the order of June 19, 2013, the Court found that, on at least three (3) occasions, the Court has dismissed civil actions commenced by plaintiff while in

1 detention for failure to state a claim for which relief may be granted. (Dkt. no. 4.¹) The
2 Court denied plaintiff's application to proceed *in forma pauperis* and ordered he must
3 pay the full filing fee within thirty (30) days or his case would be dismissed, pursuant to
4 28 U.S.C. § 1915(g). (*Id.*)

5 Plaintiff has not paid the filing fee. Plaintiff has, however, filed four notices of
6 "updated motion." (Dkt. nos. 5, 6, 7, 8.) Only in his filing at dkt. no. 5 does plaintiff
7 make an argument regarding imminent danger of physical injury. Plaintiff asserts that
8 he was under imminent danger of physical injury because from August 7 through
9 August 29, 2012, he was on a hunger strike. (Dkt. no. 5, at p. 1.) Plaintiff's allegation
10 regarding a hunger strike almost one year ago does not establish that plaintiff is
11 currently under imminent danger of serious physical injury. Plaintiff, having failed to pay
12 the filing fee for this action and having failed to demonstrate that he is under imminent
13 danger of serious physical injury, has not made the showing required by 28 U.S.C. §
14 1915(g) to allow his complaint to proceed.

15 IT IS THEREFORE ORDERED that this action is DISMISSED without prejudice
16 for failure to pay the filing fee. The Clerk of Court shall enter final judgment accordingly.

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18 DATED THIS 24th day of July 2013.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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¹See *Ochoa v. Cook, et al.*, 3:02-cv-00450-DWH-RAM; *Ochoa v. Willis, et al.*,
3:02-cv-00545-ECR-VPC (both dismissed for failure to state a claim upon which relief
may be granted); *Ochoa v. Putter C/O, et al.*, 3:10-cv-00364-HDM-RAM (dismissed as
delusional and factually frivolous). The Court takes judicial notice of its prior records in
the above matters.